

September 25, 2000

D.T.E. 00-22-07

Complaint filed by Rosemary Hallahan, pursuant to G.L. c. 93, § 108 et seq., with the Department of Telecommunications and Energy for a finding that her local and regional telephone service was switched to Essential.com, Inc. without authorization.

APPEARANCES: Rosemary Hallahan

542 Chandler Street, 2d Floor

Worcester, Massachusetts 01602

Complainant

Christopher Kallaher, Esq.

Essential.com, Inc.

1 Burlington Woods Drive

Burlington, Massachusetts 01803

Respondent

I. INTRODUCTION

On April 26, 2000, Rosemary Hallahan ("Complainant"), pursuant to G.L. c. 93,

§ 108 et seq., notified the Department of Telecommunications and Energy ("Department") that Essential.com ("Essential.com" or "Company") had switched her local and regional telecommunications service from Bell Atlantic without authorization.

On September 12, 2000, pursuant to notice duly issued, the Department conducted an evidentiary hearing. At the hearing, the Complainant submitted a written statement containing the substance of her complaint as well as authorization for her husband, Mark Hallahan, to appear pro se on her behalf. The Company sponsored the testimony of Christopher Kallaher, Vice President and General Counsel for the Company.

II. POSITIONS OF THE PARTIES

A. Complainant

The Complainant testified that she moved to Worcester in Summer 1999 and established local and regional telephone service with Bell Atlantic and long distance service with AT&T (Consumer Exh. 1 at 1; Tr. at 8-9). The Complainant testified that she learned of the switch to Essential.com when she received a letter from Bell Atlantic expressing its regret at losing the Complainant as a customer to Essential.com (id.). The Complainant stated that she did not authorize the switch of her local and regional service provider (id.).

B. Essential.com

Essential.com conceded that the switch in telephone service was not authorized (id. at

11- 12). The Company stated that the switch resulted from an Essential.com incentive check that was endorsed by someone who was erroneously listed as the customer of record (Exh. DTE-1; Tr. at 11-12, 15). As a result of the unauthorized change in the Complainant's service, the Company testified that it waived charges incurred by the Complainant (Tr. at 12). Moreover, the Company stated that it has since implemented procedures to prevent a similar occurrence (id.). Specifically, Essential.com has eliminated the use of incentive checks (id. at 12, 20-23). The Company stated that Bell Atlantic was reimbursed for the payments that it would have received from the Complainant had the switch not taken place (Tr. at 16-17).⁽¹⁾

III. STANDARD OF REVIEW

Pursuant to G.L. c. 93, § 109(a), a change in a customer's primary interexchange carrier ("IXC") shall be considered to have been authorized only if the IXC or local exchange carrier ("LEC") that initiated that change provides confirmation that the customer did authorize such change either through a signed LOA or oral confirmation of authorization obtained by a company registered with the department to provide third party verification

services in the commonwealth. G.L. c. 93 § 109 (b) defines an LOA as a separate document that provides for an authorization to initiate a primary IXC or LEC change.

Massachusetts law provides that for an LOA to be valid, among other things, it (1) must contain the signature and billing address of someone authorized to change the telephone provider, (2) shall not be combined with inducements of any kind on the same document, and (3) shall be printed in 12 point type and contain clear and unambiguous language that confirms the customer's decision to change the primary IXC.

Pursuant to G.L. c. 93, § 110 (i), the Department shall hold a hearing to determine, based on our review of the LOA and any other information relevant to the change in telephone service, whether the customer did authorize the carrier change.

IV. ANALYSIS AND FINDINGS

In accordance with G.L. c. 93, § 110(i), once the Complainant notified the Department of her intent to challenge the veracity of the LOA, a hearing was conducted to determine whether the change in the Complainant's local and regional carrier was authorized. The Company did not challenge the Complainant's testimony that the LOA was invalid and, in fact, it conceded that the switch was not authorized. The Company has waived all charges to the Complainant for the switch in service and restored her service to Bell Atlantic. Thus, the Department finds that the switch of Complainant's local and regional telephone service from Bell Atlantic to Essential.com was not authorized and violated G.L. c. 93, § 109(a).

The Department further finds that the Company violated G.L. c. 93, § 109(b) when it combined an inducement in the form of an incentive check on its LOA which resulted in a switch that was not authorized. The Company testified that it has abandoned the incentive check program and implemented procedures to prevent unauthorized switches in service.

This is the first instance in which Essential.com has been determined by the Department to have switched any customer's IXC or LEC without proper authorization. Pursuant to G.L. c. 93, § 112(b) an IXC or LEC determined by the Department to have switched any customer's IXC or LEC without proper authorization more than once in a 12 month period, shall be subject to a civil penalty not to exceed \$1,000 for the first offense and not less than \$2,000 for any subsequent offense.⁽²⁾ Therefore no restitution by or further directives to the Company are required under the terms of this order.

V. ORDER

Accordingly, after notice, hearing and consideration, it is determined without further order or directive that Essential.com switched Rosemary Hallahan's local and regional telephone service provider without authorization and in violation of the provisions of G.L. c. 93, § 109 (a) and (b)(2).

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission,

or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. On September 20, 2000 Bell Atlantic confirmed in writing that it did not incur any financial loss as a result of this transaction.

2. An IXC or LEC determined by the Department to have intentionally, maliciously or fraudulently switched the service of more than 20 customers in a 12-month period, may be prohibited from selling telecommunications services in the Commonwealth for a period of up to one year. G.L. c. 93, § 112(b).